IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2616 OF 1994

Mr.R.N.Renjen,)
an Indian Inhabitant, residing)
at 141, CCI Chambers, Dinshaw)
Vachha Road, Bombay - 400 020.)..PETITIONER.

Versus

1. The Hotel Corporation of)
India Ltd., a Company)
registered under the)
Companies Act, 1956,)
having its registered)
office at 5th Floor,)
Centaur Hotel, Bombay)
Airport, Bombay - 400 099.)

2. The Managing Director,)
Hotel Corporation of)
India Ltd., 5th Floor,)
Centaur Hotel, Bombay)
Airport, Bombay-400 099.)

3. The Secretary,)
Ministry of Civil)
Aviation and Tourism,)
Government of India,)
Rajiv Gandhi Bhavan,)
Safdarganj Airport,)
Aurbindo Marg,)
New Delhi - 110 003.)

4. The Director,)
Bureau of Public)
Enterprises, Ministry of)
Industry, Government of)
India, CGO Complex,)
Block No.14, Lodhi Road,)
New Delhi-110 003.) ..RESPONDENTS.

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Mr.C.J.Sawant, Sr.Counsel with Prashant Naik with

R.K.Satpalkar with Ms.Meghna Shah i/b. Mulla & Mulla for the Petitioner.

Mr.S.K.Talsania with J.H.Saluja i/b. M.V.Kini & Co. for the Respondents.

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CORAM : **DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **NOVEMBER 13, 2006.**

ORAL JUDGMENT :(PER SMT.V.K.TAHILRAMANI,J.)

1. In this Petition filed under Article 226 of the Constitution of India, the petitioner seeks exception to the Board resolution dated 30.12.1994 thereby refusing him the benefit of voluntary retirement in accordance with the Scheme announced by the first respondent Corporation in that regard.

2. The petitioner was working as Director Administration and Company Secretary of the first respondent Corporation, which is an undertaking of the Government of India as its entire share capital is owned by Air India. The exercise of supervision and control over the functions of Corporation is that of the Government of India. The Government of India through the Ministry of

Industry, Bureau of Public Enterprises announced a *Voluntary Retirement Scheme* vide its office memorandum dated 5.10.1988 for the employees of Public Sector Enterprises; and in response to the same the Ministry of Finance (Department of Revenue) by its order dated 29.5.1991 directed that the said Scheme was approved by the respondent Corporation.

3. The petitioner vide his application dated 27.9.1993 requested for benefit of the said Scheme. The said application was considered in the board meeting of the respondent Corporation held on 30.12.1993 and the decision taken thereon was communicated to him on the same day. On 18.2.1994 the petitioner submitted his resignation and the instant Petition has been filed before this Court on 5.12.1994 i.e. almost one year from the date when his request for *voluntary retirement* was turned down.

4. Being aggrieved by the said decision, taken on 30.12.1993 this Petition has been preferred. As per the petitioner, the decision rejecting the

application for *voluntary retirement* is arbitrary, illegal, *ultra vires* and null and void.

5. In the affidavit-in-reply filed on behalf of the first respondent, it is pointed out that the *voluntary retirement scheme* was aimed at reducing surplus manpower and the post of Company Secretary being of vital importance, the petitioner could never be treated as surplus. Moreover it is to be noted that it was at the discretion of the Corporation to accept or reject the applications received in respect of the said Scheme.

6. In the affidavit-in-rejoinder, the petitioner has admitted that he was present in the Board meeting held on 30.12.1993 and though he was not present when his application for voluntary retirement was considered, he was informed immediately thereafter that the same has been rejected by the Board.

7. At the first instance, it is clear that after the petitioner’s application for voluntary

retirement was rejected as per the Board resolution dated 30.12.1993, the petitioner submitted his resignation dated 18.2.1994 i.e. after about one and half month, and therefore, in this Petition filed belatedly, the petitioner has no *locus standi* to challenge the decision of the Board dated 30.12.1993. If the petitioner had approached this Court and agitated against the said Board resolution without submitting his resignation, the circumstances would be totally different. It is also pertinent to note that by accepting his resignation, he was relieved from his post on 3.3.1994. Under these circumstances, the Petition deserves to be dismissed on this preliminary ground itself.

8. A perusal of the Scheme for *Voluntary Retirement* shows that it contains certain terms and conditions. Clause (2) of the Scheme stated thus:

> 2. The Voluntary Retirement Scheme would be applicable to all employees, workers and

> executives. Where there is a surplus manpower, the vacancy caused by Voluntary Retirement Scheme would not be filled up. Voluntary Retirement Scheme on the above parameters can be introduced by the Public Enterprises with the approval of the Administrative Ministries.

9. As is well known, the post of Company Secretary is a statutory post and it was occupied by the petitioner. When the post was not manned by more than one person, there was no question of any holder of such post being declared surplus. The preamble of the Scheme also indicates that its object was to reduce surplus manpower in the Corporation. Clause (2) of the Voluntary Retirement Scheme clearly states that the vacancy caused by Voluntary Retirement Scheme would not be filled up. The post of Company Secretary being an important and vital one, it would not be possible for the Corporation to function without a Company

Secretary. It would create a chaotic situation if the post is allowed to lapse and would never be filled up. The Voluntary Retirement Scheme of the Corporation clearly provides that the Managing Director had the right to accept or refuse the request of the employee to retire voluntarily under the Scheme and the decision of the Management in this regard shall be final. Admittedly, the application of the petitioner for voluntary retirement was discussed in the board meeting held on 30.12.1993 and it was rejected unanimously, which decision was communicated to the petitioner on the very same day. The said fact has been admitted by the petitioner in his rejoinder. The petitioner in his rejoinder affirmed on 23rd April, 1999 has stated that immediately after the issue relating to his voluntary retirement considered in the board meeting, he was informed by the Chairman that since he was their best employee the entire Board was requesting him to withdraw his application. In the said rejoinder, the petitioner has further admitted that the sole ground on which the application of the petitioner for voluntary

retirement came to be rejected was that his post was an important and vital one and, therefore, the Management could not consider the petitioner's request to retire under the said Voluntary Retirement Scheme.

10. The learned senior counsel for the petitioner has placed reliance on the decision in the case of **Manjushree Pathak Vs. Assam Industrial Development Corpn. Ltd. and Ors., (2000) 7 Supreme Court Cases 390**. In the said case, the Supreme Court held that the discretion, conferred on the Corporation for accepting or rejecting application for voluntary retirement, was to be exercised judiciously. In the said case, it was observed that the Managing Director of the Corporation failed to act reasonably and fairly. In the present case, the discretion has been exercised absolutely judiciously and infact the decision taken is reasonable, fair and just one. Looking to the fact that the petitioner was a Company Secretary, his application for voluntary retirement could not have been considered.

11. Thereafter, the learned senior counsel for the petitioner has placed reliance on the decision in the case of **Bank of India & Ors. Vs. O.P.Swarnakar & Ors., (2003) 2 Supreme Court Cases 721**. Reliance was placed on the observations made therein, where it is stated as under :

> "... The banks, therefore, cannot take recourse to "hire and fire" for the purpose of terminating the services of the employees. The banks are required to act fairly and strictly in terms of the norms laid down therefor. Their actions in this behalf must satisfy the test of Articles 14 and 21 of the Constitution of India. Having regard to the intendment of the Scheme, each and every employee would not be entitled to the benefit of the said Scheme. Those who are

> facing disciplinary proceedings or working in a particular class of employment are not eligible therefor."

. However, the said decision does not help the petitioner in any manner as the Corporation has not taken recourse to any such method of "hire and fire". Moreover, the Supreme Court has clearly observed that, having regard to the intendment of the Scheme, each and every employee would not be entitled to the benefit of the said Scheme and that those who are working in a particular class of employment are not eligible for voluntary retirement scheme. Infact, these observations go against the petitioner because having regard to the Scheme of the Corporation for voluntary retirement, it is clear that each and every employee would not be entitled to the benefit of the Scheme and a person working in a particular class of employment may not be eligible for the said benefit of voluntary retirement.

12. As stated earlier, in the

affidavit-in-reply the Corporation has specifically stated that the post of the petitioner being of vital importance, he could not be relieved by accepting his request for voluntary retirement. It is also clear that the post the petitioner was holding of Company Secretary was not a surplus post.

13. In the facts and circumstances of the case, we are satisfied that the decision of the Management impugned in this Petition cannot be termed as arbitrary, illegal or unjust. In the premises, Petition fails and the same is hereby dismissed. Rule stands discharged.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]